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C O N F I D E N T I A L SECTION 01 OF 03 SARAJEVO 000093

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SUBJECT: BOSNIA - ABU HAMZA, THE CRC, AND EXTREMISTS: A  
CASE STUDY IN GETTING TO DEPORTATION

REF: SARAJEVO 2623

Classified By: CDA Judith Cefkin. Reasons 1.4 (B) and (D).

11. (C) SUMMARY: The Citizenship Review Commission (CRC) has completed its review of the decisions on naturalization made by Bosnian government officials on behalf of former mujahedeen who came to fight for the Republic of Bosnia during the 1992-1995 war. Elements of the Bosnian government, notably the State Intelligence Service (OSA), Foreigner's Affairs Service (FAS), and mid-level officials in the Ministry of Security want to deport those stripped of their citizenship that they deem a threat to national security. We have been working with them to accomplish this goal. This amounts to a few dozen individuals, the most prominent of which is Abu Hamza (DPOB: October 8, 1963, Mouhassan, Syria). Hamza was stripped of his citizenship in January 2007, but he appealed the decision and has filed requests for temporary residence and asylum, which have allowed him to remain in the country for the last 12 months. Efforts to deport Hamza are a case study in the difficulties associated with enforcing CRC decisions. They also highlight the importance of closing legal loopholes that prevent the Bosnian government from acting to protect its own national security and the safety of its citizens. We continue to press for the passage of a new Law on Movement and Stay of Aliens and Asylum that would close some of these. END SUMMARY.

Background

12. (C) The Citizenship Review Commission's (CRC) primary purpose is to review decisions on naturalization of foreigners in Bosnia taken between April 1992 and January 12006. The CRC recently completed this work, stripping Bosnian nationality from more than six hundred individuals who had obtained it illegally. Most of those individuals who lost their citizenship were mujahedeen who came to Bosnia during the 1992-1995 war to fight along side Bosniaks. Many mujahedeen remained in Bosnia after the war. Some married Bosnian women, had children with them, and integrated into Bosnian society. Others established Islamist networks within Bosnia and are considered by the State Intelligence Agency (OSA) a security threat. We have been working closely with Bosnian government officials to ensure that the most dangerous of those who lost their citizenship are deported.

Abu Hamza (the Syrian)

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¶3. (C) Among the most prominent and most dangerous former mujahedeen in Bosnia is Syrian national Abu Hamza (DPOB: October 8, 1963, Mouhassan, Syria). Hamza was granted citizenship on March 23, 1992 and again on November 22, 1994 based on his marriage to a Bosnian and service in the Army of the Republic of Bosnia during the 1992-1995 war. The Council of Ministers confirmed the CRC's decision to strip Hamza of his Bosnian citizenship on January 9, 2007. The CRC concluded that Hamza had committed fraud to obtain citizenship. More than a year later, despite the CoM's confirmation of the CRC decision, Hamza remains in Bosnia. He continues to engage in a public campaign to discredit the CRC and has threatened violence if the Bosnian government tries to deport him. He has also sought to exploit every available legal avenue available to him to prevent his deportation.

#### The CRC Appeal Process

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¶4. (C) Each individual stripped of citizenship has the right to file an administrative appeal before the State Court, though they must do so within 60 days. Hamza filed his administrative appeal on March 5, 2007, just before the deadline for filing an appeal expired. Hamza did not dispute the CRC decision to strip of the citizenship granted to him in 1992, but did dispute the CRC's claim that he obtained his 1994 citizenship fraudulently. The State Court rejected Hamza's appeal in April, but Hamza appealed this decision to the Constitutional Court, claiming that the Bosnian government had violated his human rights by denying him the

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right to a fair hearing, and seeking an injunction against future deportation based on the Bosnian constitutional "right to private and family life, home and correspondence." Though not yet public, we understand the Constitutional Court ruled against Hamza in both instances the week of January 7.

#### Seeking Temporary Residence

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¶5. (C) At the same time that Hamza was pursuing his appeal of the CRC decision, he applied to the Foreigner's Affairs Service for a temporary residence permit. This status is granted to individuals who are stateless; victims of organized crimes or trafficking; face persecution in their native countries due to race, religion, nationality, membership in a particular social group or to political beliefs but were denied asylum; or whose requests were approved by the Ministry of Security based on other justified humanitarian ground. Officials may grant temporary stay for up to three months, with the possibility of extensions. In addition, individuals married to Bosnian citizens apply for a temporary residence permit based on their marriage and on family reunification. Hamza's claim was based on his marriage to a Bosnian national. It was rejected by the Foreigners Affairs Section in May 2007 and again on appeal by the Ministry of Security in July 2007. Hamza filed an administrative appeal of the Ministry's decision with the State Court on September 17, 2007. This case is still pending.

Or, Asylum

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¶6. (C) Not surprisingly, Hamza also filed an asylum claim. Bosnia's asylum process is lengthy, often taking between a year and two years to complete, sometimes even longer. Those who entered the country illegally are not prosecuted. Under the 2003 Law on Movement and Stay of Aliens and Asylum, asylum seekers are allowed to travel freely throughout the country while their cases are being processed, unless they pose a public health or safety risk. In practice,

authorities do little to keep track of their whereabouts. Individuals who receive asylum retain status indefinitely, but are not entitled to facilitated naturalization. Rejected applicants can file an appeal with the Ministry of Security, and if the decision remains unchanged, have two months to file an appeal with the State Court, where cases may linger for some time. They can be deported if the Court upholds the Ministry of Security's decision. Though Hamza's asylum claim was rejected by the Ministry of Security on August 8, 2007, Hamza filed an appeal with the State Court in October. This case, like the temporary residence case, is still pending.

#### Fear of Persecution

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17. (C) Even if the State Court rejects Hamza's asylum appeal, he has the option of challenging his deportation by claiming he would be tortured if he is deported to Syria. He may file such a motion to the State Constitutional Court and with the European Court of Human Rights in Strasbourg. The 2003 Law on Movement and Stay of Aliens and Asylum would allow Hamza to remain in Bosnia while his appeals are being processed. The law excludes individuals guilty of committing war crimes, crimes against humanity, crimes against UN principles, or other severe crimes before coming to Bosnia from the asylum process altogether. If they can not be deported, they would, in theory, have to serve their sentences in Bosnia. None of these apply to Hamza, however. Once there are no longer any legal barriers, the Foreigners, Affairs Service would carry out Hamza's deportation. Hamza would still have one last opportunity to block deportation by filing, within 15 days, an appeal with the Ministry of Security. If the Ministry rejects his appeal, he must leave Bosnia within 60 days or must file an appeal with the State Court, an act that stays deportation until a final decision is reached.

#### Pending Legislation to Close Asylum Loopholes

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18. (C) Parliament should consider a draft law in the next few months that would address weak points in the asylum process,

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which former mujahedeen could abuse. Driven in large part by our efforts to beef up Bosnia's counter terrorism capabilities and security, the draft law would introduce clear standard operating procedures along the lines of the Czech (an EU compliant) model. Among things, it would: Create an expedited asylum process that eliminates delays in processing and adjudicating cases; Exclude individuals who have participated in terrorist activities from seeking asylum; Define frivolous claims; Prevent individuals who have been denied asylum from filing a new claim unless conditions have changed; Spell out in greater detail the establishment and administration of immigration, reception and other centers to accommodate foreigners; Prescribe timeframes and the conditions under which foreigners could be detained. As an illustration, in a departure from current practice, the draft law would allow officials to deport individuals eight days after the Ministry of Security rejects asylum their appeals, regardless of whether or not they choose to appeal their cases with the State Court.

#### Comment

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19. (C) It is unclear how long it will take Abu Hamza's various appeals to work their way through the judicial system. There is a large back log of administrative cases in the Bosnian judicial system, and it often takes time before administrative appeals are heard. Regardless, Hamza's underscores how someone with a smart lawyer and who is determined to resist deportation can successfully prolong his stay in Bosnia, even if he is judged a threat to Bosnia's national security. Securing passage of a new Law on Movement of Aliens and Asylum, one of our top legislative priorities

this year, would close off some of these loopholes and prevent others from exploiting them. We suspect Hamza and other former mujahedeen are savvy enough to understand the implications of the draft law and will likely claim its passage violate their human rights. There are also some within senior Bosnian political circles, including Bosniak member of the Tri-Presidency Haris Silajdzic and Party for Democratic Action (SDA) Minister of Security Tarik Sadovic, who are vulnerable to these pressures about Bosnia's image in the "Arab world." USG efforts in 2006 to close a loophole in Article 10 of the Law on Citizenship, which former mujahedeen could exploit, were already derailed by Bosniak nationalists sympathetic to the former mujahedeen arguments about human rights. Therefore, carrying out the planned deportations of the former mujahedeen is likely to be protracted, and at times contentious process.

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